



May 8, 2002

Ms. Sara Hartin  
Assistant City Attorney  
City of Killeen  
101 North College  
Killeen, Texas 76541

OR2002-2438

Dear Ms. Hartin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162587.

The City of Killeen (the "city") received a request for information relating to a dog-bite incident. You state that the city has released some of the requested information. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.

We first note that the requested information is subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the requested information is contained in a completed report. Thus, this information must be released under section 552.022(a)(1) unless it is expressly confidential under other law or excepted from disclosure under section 552.108.

The city claims that some of the information at issue is confidential by law under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. The city raises section 552.101 in conjunction with sections 826.0211 and 826.0311 of the Health and Safety Code.

Section 826.0211 provides in part:

(a) Information that is contained in a rabies vaccination certificate that identifies or tends to identify the owner or an address, telephone number, or other personally identifying information of the owner of the vaccinated animal is confidential and not subject to disclosure under Chapter 552, Government Code.

Health & Safety Code § 826.0211(a). Section 826.0311 provides in part:

(a) Information that is contained in a municipal or county registry of dogs and cats under Section 826.031 that identifies or tends to identify the owner or an address, telephone number, or other personally identifying information of the owner of the registered dog or cat is confidential and not subject to disclosure under Chapter 552, Government Code.

Health & Safety Code § 826.0311(a). Section 826.0211 makes a rabies vaccination certificate confidential. Section 826.0311 makes a municipal or county pet registry confidential. The requested information is contained, however, in a document titled "Animal Bite Report." Sections 826.0211 and 826.0311 are not applicable to this document. Only a rabies vaccination certificate is made confidential under section 826.0211. Only a pet registry is made confidential under section 826.0311. Sections 826.0211 and 826.0311 are not applicable to a document such as the submitted "Animal Bite Report," although it may include information that also is contained in a rabies vaccination certificate or a pet registry. Thus, information contained in the "Animal Bite Report" is not excepted from disclosure under section 552.101 of the Government Code in conjunction with sections 826.0211 and 826.0311 of the Health and Safety Code. *See also* Open Records Decision Nos. 649 at 3 (1996) (language of a confidentiality provision controls the scope of its protection), 478 at 2 (1987) (statutory confidentiality requires express language making certain information confidential or stating that information shall not be released to the public).

The city also claims that certain information contained in the "Animal Bite Report" is confidential under section 826.041 of the Health and Safety Code. Section 826.041 provides in part:

(a) A person who knows of an animal bite or scratch to an individual that the person could reasonably foresee as capable of transmitting rabies, or who knows of an animal that the person suspects is rabid, shall report the incident or animal to the local rabies control authority or the county or municipality in which the person lives, in which the animal is located, or in which the exposure occurs.

(b) The report must include:

(1) the name and address of the victim and of the animal's owner; if known; and

(2) any other information that may help in locating the victim or animal.

Health & Safety Code § 826.041(a)-(b). The city contends that information contained in the "Animal Bite Report" that need not be reported under section 826.041 is therefore confidential and not subject to disclosure. We disagree. Section 826.041 is not a confidentiality provision. Furthermore, statutory confidentiality must be express, and a confidentiality requirement will not be implied from a statutory structure. *See Open Records Decision No. 658 at 4 (1998)*. Information contained in the "Animal Bite Report" may not be withheld from disclosure under section 552.101 of the Government Code in conjunction with section 826.041. *See also Open Records Decision No. 525 at 4 (1989)* (information cannot be withheld from public disclosure by negative implication simply because a statute designates other specific information as public information).

The city also claims that section 552.108 of the Government Code is applicable to the "Animal Bite Report." Section 552.108(a)(2) excepts from disclosure "information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication[.]" Section 552.108(b)(2) excepts from disclosure "an internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution . . . if . . . the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication[.]"

The city indicates that the "Animal Bite Report" is a record created by its animal control department. The city argues that the animal control department qualifies as a law enforcement agency for purposes of section 552.108. We note, however, that section 552.108 is generally not applicable to the records of an agency whose function is essentially regulatory in nature. *See Open Records Decision No. 199 at 1 (1978)*. We therefore conclude that the city may not withhold information contained in the "Animal Bite Report"

under section 552.108. *See also* Open Records Decision No. 287 at 2 (1981) (law enforcement exception not applicable to record of division of police department that provides social services).

The city also claims that the "Animal Bite Report" contains driver's license information. Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" Gov't Code § 552.130(a)(1). This exception is applicable to information that relates to a Texas driver's license. The city has not demonstrated, however, that the "Animal Bite Report" contains any information that is excepted from disclosure under section 552.130.

In summary, none of the information contained in the "Animal Bite Report" is excepted from disclosure under sections 552.101, 552.108, or 552.130 of the Government Code. Therefore, the city must release the rest of the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

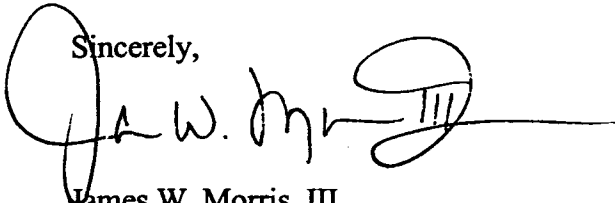
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a large, stylized initial "J" and a long horizontal stroke extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 162587

Enc: Submitted documents

c: Ms. Rachel W. Leach  
Smith & Carlson  
P.O. Box 10520  
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(w/o enclosures)